

August 8, 2003
DOBI/DHSS Bulletin 2003-01

TO: All Hospital Service Corporations, Medical Service Corporations, Health Service Corporations, Insurers Authorized to Transact a Health Insurance Business in New Jersey, Health Maintenance Organizations, Dental Service Organizations, and Dental Plan Organizations

FROM: Holly C. Bakke, Commissioner, New Jersey Department of Banking and Insurance, jointly with Clifton R. Lacy, M.D., Commissioner, New Jersey Department of Health and Senior Services

RE: Collection and Use of Demographic Data

The Department of Banking and Insurance (“DOBI”) and the Department of Health and Senior Services (“DHSS”) have become aware of a misconception among many regulated entities and researchers regarding the ability of carriers¹ to collect demographic data under New Jersey law. Based on information received in recent months, it appears that some carriers and others think carriers are prohibited by New Jersey statutes or regulations from collecting demographic data regarding policyholders, certificate holders, subscribers, enrollees or members (“covered lives”). This is inaccurate. DOBI and DHSS are issuing this bulletin in an effort to address this misconception.

There is no prohibition in New Jersey law regarding the collection of demographic data by carriers. There are limitations as to how the data can be collected, and restrictions on how the data may be used.

New Jersey regulation prohibits carriers from collecting certain demographic data through application forms for certain segments of health insurance or health coverage. N.J.A.C. 11:4-16.7 prohibits the use of any statements, provisions or questions pertaining to the race, creed, color, national origin or ancestry of a proposed covered life within an application form. This regulation applies to individual health insurance policies generally. In addition, the application forms promulgated by the Individual Health Coverage Program Board of Directors and the Small Employer Health Benefits (“SEH”) Program Board of Directors do not include questions regarding race, creed, color, national origin or ancestry on the applications for the standard health benefits plans

¹ The term “carrier” includes hospital service corporations, medical service corporations, health service corporations, insurers authorized to transact a health insurance business in New Jersey, health maintenance organizations, dental service organizations, and dental plan organizations.

offered in those markets. Similar restrictions do not apply for the non-SEH group market for medical or hospital expense coverage or the group market for other types of health insurance. Collection of the data through other avenues is not prohibited in any markets.

New Jersey statutes restrict the uses of demographic data that is collected in the application and underwriting process in certain markets. For example, certain demographic data, such as race, creed, color and ethnicity, cannot be used to discriminate against an individual or a group in the issuance, withholding, extension or renewal of any policy for health coverage, or in the rating, terms or conditions applicable to such health coverage, or in the issuance or acceptance of applications for health coverage.² Certain demographic data can not be used to unfairly discriminate between individuals of the same class and of essentially the same hazard in the premium, policy fees or rates charged or in the benefits payable, or in any of the terms or conditions or any other matter related to the health coverage. N.J.S.A. 17B:30-12. Additional state and federal restrictions may apply to the use of specific types of demographic data. For instance, requirements for community rating or modified community rating prevent or limit the use of age and gender as rating factors in some markets, though these may be valid rating factors for other markets.³ This does not mean that demographic data cannot be collected for research or other non-prohibited uses.

DOBI and DHSS are aware that the collection of demographic data is relevant in attempting to address disparities in health, health care outcomes, and access to health care services. DOBI and DHSS also are aware that use of various types of demographic data may give carriers, particularly those with managed care products, greater ability to focus education, preventive care, disease and case management services among their covered lives whose demographics suggest a greater need for these services in order to prevent, treat or mitigate the effects of certain diseases or conditions for which certain classes of covered lives may be at greater risk. Accordingly, DOBI and DHSS encourage carriers to collect whatever demographic data they believe necessary to pursue these endeavors. While the means for collection of the demographic data and the uses to which the data may be applied may be limited somewhat, carriers may and should collect such data for permissible purposes if they believe it is beneficial for them to do so.

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² The statutory standards are not necessarily limited to health coverage.

³ Of course, state and federal laws apply with respect to the dissemination of data, particularly if health information and personal identifiers can be linked, and these always should be taken into consideration.